

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TODD ALLEN NASH,

Defendant-Appellant.

UNPUBLISHED
February 12, 2008

No. 275192
Allegan Circuit Court
LC No. 06-014696-FH

Before: Talbot, P.J., and Cavanagh and Zahra, JJ.

PER CURIAM.

Defendant was convicted by a jury of third-degree criminal sexual conduct (CSC), MCL 750.520d(1)(a), and fourth-degree criminal sexual conduct, MCL 750.520e(1)(a), for which he was sentenced to concurrent prison terms of 66 to 180 months and 16 to 24 months, respectively. He appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that misconduct by the prosecutor denied him a fair trial. Because defendant did not object to the prosecutor's conduct at trial, we review this issue for plain error affecting defendant's substantial rights. *People v Goodin*, 257 Mich App 425, 431; 668 NW2d 392 (2003).

"The propriety of a prosecutor's remarks depends on all the facts of the case." *People v Rodriguez*, 251 Mich App 10, 30; 650 NW2d 96 (2002). The prosecutor's comments are "examined in context and evaluated in light of defense argument and the relationship they bear to the evidence admitted at trial." *People v Brown*, 267 Mich App 141, 152; 703 NW2d 230 (2005).

The prosecutor did not improperly vouch for the complainant's credibility. See *People v Bahoda*, 448 Mich 261, 276; 531 NW2d 659 (1995). The prosecutor did not argue that statistics cited by witnesses made it likely that defendant committed the offenses. She referred to the statistics in the context of arguing that child sexual abuse does happen and argued that the fact that the subject may be distasteful is no reason to conclude otherwise. Nor did the prosecutor argue that the complainant should be believed because a special protocol was utilized during a forensic interview or because the interviewers believed her. Rather, she suggested that the complainant should be believed because her testimony was consistent with her prior statements, which although elicited through questioning, were elicited through neutral questioning. The

prosecutor may comment on the credibility of her own witness during closing argument and argue from the facts that the witness has no reason to lie or should be believed. *People v Thomas*, 260 Mich App 450, 455; 678 NW2d 631 (2004); *People v Wise*, 134 Mich App 82, 104; 351 NW2d 255 (1984). Because there was no error, counsel was not ineffective for failing to object. *People v Kulpinski*, 243 Mich App 8, 27; 620 NW2d 537 (2000).

To the extent that the prosecutor improperly argued facts not in evidence by asserting that defendant's stepdaughter recanted her own report of sexual abuse because her mother did not believe the report, *People v Stanaway*, 446 Mich 643, 686; 521 NW2d 557 (1994), reversal is not required because any error was minor in the context of the prosecutor's broader proper argument, which was supported by the evidence. Further, any error was effectively cured by the trial court's instructions that the jury was to decide the case based only on the evidence and that the attorneys' arguments are not evidence. *Bahoda, supra* at 281. "Jurors are presumed to follow their instructions." *People v Bauder*, 269 Mich App 174, 190; 712 NW2d 506 (2005) (citation omitted). Because the court's instructions were sufficient to cure any error, there is no reasonable probability that the outcome would have been any different had defense counsel objected and requested an immediate curative instruction. See *People v Watkins*, 247 Mich App 14, 30; 634 NW2d 370 (2001).

Defendant next contends that, contrary to *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004), the trial court utilized facts not found by the jury in scoring the sentencing guidelines. We disagree. Our Supreme Court has repeatedly held that *Blakely* does not affect Michigan's indeterminate sentencing scheme. See, e.g., *People v Harper*, 479 Mich 599, 613-615; 739 NW2d 523 (2007); *People v McCuller*, 479 Mich 672, 689-690; 739 NW2d 563 (2007); *People v Drohan*, 475 Mich 140, 162-164; 715 NW2d 778 (2006). This Court is bound by those decisions. *People v Beasley*, 239 Mich App 548, 559; 609 NW2d 581 (2000). Because there was no error, counsel was not ineffective for failing to object. *Kulpinski, supra*.

Affirmed.

/s/ Michael J. Talbot
/s/ Mark J. Cavanagh
/s/ Brian K. Zahra